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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/234,847 01/22/99 LEVY

S PKZ-013CP

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HM22/0322

EXAMINER

BADIO, B

ART UNIT

PAPER NUMBER

1616
DATE MAILED:

03/22/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action SummaryApplication No.
09/234,847Applicant(s)
Levy et al.Examiner
Barbara BadioGroup Art Unit
1616☐ Responsive to communication(s) filed on _____.☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims☒ Claim(s) 1-29 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.☐ Claim(s) _____ is/are rejected.☐ Claim(s) _____ is/are objected to.☒ Claims 1-29 are subject to restriction or election requirement.**Application Papers**☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.☐ The drawing(s) filed on _____ is/are objected to by the Examiner.☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.☐ The specification is objected to by the Examiner.☐ The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119**☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.☐ received in Application No. (Series Code/Serial Number) _____.☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)**☐ Notice of References Cited, PTO-892☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____☐ Interview Summary, PTO-413☐ Notice of Draftsperson's Patent Drawing Review, PTO-948☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-7 and 29 (in part), drawn to compounds and compositions, classified in class 552, subclass 203+.
 - II. Claims 8-10, 14-19 and 29 (in part), drawn to compounds and compositions, classified in class 552, subclass 201.
 - III. Claims 11-13 and 29 (in part), drawn to compounds and compositions, classified in class 552, subclass 200+.
 - IV. Claims 20-27 (in part), drawn to a method of use of compounds of Group I, classified in class 514, subclass 152+.
 - V. Claims 20-27 (in part), drawn to a method of use of compounds of Group II, classified in class 514, subclass 152+.
 - VI. Claims 20-27 (in part), drawn to a method of use of compounds of Group II, classified in class 51, subclass 152+.
 - VII. Claim 28, drawn to a method of converting tetracycline resistant bacteria, classified in class 552, subclass 200+.

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2. The inventions are distinct, each from the other because of the following reasons: Inventions I-III and IV-VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown:

(1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product (see Groups I-III).

3. Because these inventions are distinct for the reasons given above and the search required for one Group is not required for the other Groups, restriction for examination purposes as indicated is proper.

4. Applicant is required to elect a single disclosed species from within the elected Group for search purposes.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable

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over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. A telephone call was made to Mr. Nicholas Triano on March 14, 2000 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

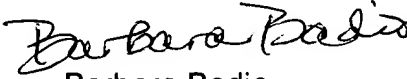
Telephone Inquiry Contacts

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara Badio whose telephone number is (703) 308-4595. The examiner can normally be reached between 7:30 am and 4 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.


Barbara Badio
Art Unit 1616

March 21, 2000